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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/769,829	01/24/2001	Norbert Miller	SWR-0037	5180

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EXAMINER
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FISHER, MICHAEL J

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 04/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/769,829

Applicant(s)

MILLER ET AL.

Examiner

Michael J Fisher

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on: \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

Claim 12 is objected to because of the following informalities: In lines 1 and 2 is the phrase, "a identification". It should be, "an identification". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 1, it is unclear what is meant by "...a specification is carried out...". There is no language in the claims or the specification to support this. Further, the language in the phrase, "is carried out" renders the scope of the claims unclear and indefinite as to exactly who is carrying out the step. This language is repeated throughout claim 1 and as such, renders the scope of the claim unclear and indefinite. Further in claim 1, section c), it is unclear what is meant by "a reservation under storage of the... are carried out by the offerer's side;"

Further, it is unclear what is meant in section d) by "... a close-up range of the identification verification system;". Specifically, it is unclear what is meant by "close-up".

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Note: For examination purposes, it will be assumed that the language, "a specification is carried out" means that a protocol is followed. Further, it will be assumed that the "carrying out" step is performed by:

In section a), the user;

In section b), the user;

In section d), unknown;

In section e), unknown.

Further, while section c) specifies what carries out the step, the passive voice is considered unclear and indefinite in method claims.

Further in section c), it will be assumed that the step as entered in the current amendment intends to claim substantially the same thing as section c) before the amendment. Specifically, to reserve the item for sale to ensure that it goes to the buyer if bought.

As to section d), it will be assumed that this means that the user is at an identification step of the process.

As to claim 2, it is unclear what is meant by a "mobile network system", specifically, whether it is the system that is mobile.

Note: For examination purposes, it will be assumed that the word, "mobile" references the senders and receivers connected to the network and not that the network itself is mobile.

As to claim 8, it is unclear and indefinite as to who releases what.

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As to claim 12, it is unclear what is being claimed. Specifically, how "a (sic) identification" is utilized, what information is related to its use, how this would generate an accounting statement and what would be included in the accounting statement, whether accounting for time, accounting for debits and credits or some other accounting.

Note: For examination purposes, it will be assumed that the identification is entered and a billing statement is provided.

Claims 3-7 and 9-11 are rejected as depending from a rejected claim.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over US PAT 6,568,595 to Russell et al. (Russell).

Russell teaches a method of selling services and/or products using a communications link (Title), wherein the user 'carries out a specification by selecting a provider's product (inherent in that the patent is directed toward selling products over the internet), transmits an identification code (claim 1), the provider sends codes to a code verification system (claim 1, symbol reader), the system triggers a non-contact code verification (claim 1), and granting access to the user upon code verification (claim 1, last paragraph).

Russell does not specifically mention a "non-contact, identification verification" however, it is very well known in the art to use wireless communications to access the Internet, so-called wi-fi hookups, and therefore, it would have been obvious to one of ordinary skill in the art to modify the system as disclosed by Russell by using a wireless internet hook-up to ease connection to the Internet. Further, the preferred method of accessing the Internet is through a telephone service.

As to claims 2-4, the various communications links are very well known in the art and therefore, it would have been obvious to one of ordinary skill in the art to use these links to ease connection to the system.

As to claim 5, the code would be issued for a user for a limited time (as long as the user keeps an account current).

As to claim 6, the user calls the system, thereby activating the link.

As to claim 7, telephone networks are well known to use optical cable, thereby meeting the limitations as claimed.

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As to claim 8, the code would be released by selective activation (upon receipt of an order by a user.)

As to claim 9, Russell would inherently have a central, processing system (web server).

As to claim 10, the central system would inherently be equipped with a data telecommunications interface (modem, to connect to the Internet). As modems transfer data from a network to a computer and vice versa, it would inherently perform the functions claimed as they are carried out.

As to claim 11, the method could be used for purchasing any items, such as reserved parking space, the information processed would be reservation information.

As to claim 12, an accounting statement would be automatically generated (it would be inherent that a bill would be generated).

### ***Response to Arguments***

Applicant's arguments filed 12/13/04 have been fully considered but they are not persuasive. As Russell teaches the steps as claimed, Russell offers goods and services and the purchaser accepts the offer by purchasing. As to arguments concerning "carrying out a specification", as understood, Russell does have the user "carry out a specification", or follow steps to accomplish the purchase. As to arguments in relation to Russell being "automatic", it is unclear how or why this should negate the use of the reference as prior art. The user does transmit an "identification" as claimed in claim 1. The code would be the 'verification'. The user cannot access the system unless the code is correct.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J Fisher whose telephone number is 571-272-6804. The examiner can normally be reached on Mon.-Fri. 7:30am-5:00pm alt Fri. off.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

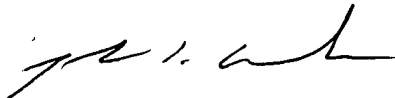
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.



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MF   
4/6/05

  
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